

STATINTL OGC HAS REVIEWED.

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24 Feb. 1949

Office of General Counsel  
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- Save-Harmless clause in.

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1. My understanding is that [ ] has declined to give us a "save-harmless" or patent indemnification clause in subject contract, that the contractor is the only known source of supply, that a patent search has not yet been made by the contractor, and that there may be some commercial use for the unit: [ ]

2. Although it is a well-established policy of the Government to seek protection against liability for patent infringement, there appear to be certain exceptions to the policy in practice. Pending publication of the Armed Services Procurement Regulations, which will enunciate a uniform policy, the Navy Department is not demanding "save-harmless" clauses in contracts for non-commercial items. Some consideration is also given to the monetary value of the contract if it is insufficient to warrant prolonged negotiation.

3. In the present contract, the Navy criterion might provide some basis for exclusion of the "save-harmless" clause since the commercial use is not clearly established. But a more valid and convincing justification seems to be the operational necessity for a unit which can be obtained only from this particular contractor. The file should carry some indication of the operational need for the equipment - the routine request from the technical section being sufficient for this purpose - and the contractor should understand that the exclusion of the clause from this contract is not a precedent for future practice.

4. Elimination of the "save-harmless" clause from this contract is therefore approved from a legal standpoint for the reasons given above.

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